Supreme Court, U.
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MICHAEL RODAK, JR., CLERK

IN THE SUPREME COURT
OF THE UNITED STATES

No. ~~79-~~1804

RODOLFO GARCIA-JARAMILLO,

Petitioner,

vs.

IMMIGRATION AND NATURALIZATION SERVICE,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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TOPICAL INDEX

PAGE

STATEMENT SHOWING JURISDICTION OF THE COURT ... 2

STATEMENT OF THE FACTS OF THE CASE 2

QUESTIONS PRESENTED 6

ARGUMENTS FOR GRANTING THE WRIT 7

I WHETHER THE HONORABLE COURT OF APPEALS FOR THE NINTH CIRCUIT COMMITTED ERROR IN RUFUSING TO ALLOW PETITIONER TO SUBMIT ADDITIONAL EVIDENCE 7

II WHETHER THE COURT OF APPEALS FOR THE NINTH CIRCUIT COMMITTED ERROR IN NOT EXCLUDING THE TESTIMONY OF MS. ALMENGOR AND MS. OCHOA ON THE GROUND THAT SAID TESTIMONY WAS EXECUTED UNDER FORCE, DURESS AND/OR COERCION 9

III WHETHER THE HEARING CONDUCTED AT THE TRIAL LEVEL SATISFIES DUE PROCESS OF LAW 11

CONCLUSION 16

APPENDICES

APPENDIX "A" 17

APPENDIX "B" 23

APPENDIX "C" 24

APPENDIX "D" 25

TABLE OF AUTHORITIES

Case	Page
Bong Youn Choy v. Barber	
279 F. 2d 642 (9th Cir. 1960)	11
Jachero-Cuzco	
File A22-525-878	11, 16
United States of America v. Alberta Lloyd	8
400 F. 2d 414	8
Valeroz v. INS	
387 F. 2d 921 (7th Cir. 1967)	11
Whetstone v. INS	
561 F.2d 1303, 1306 (9th Cir. (1977)	7
Wong Yang v. McGrath	
339 U.S. 33	12
Woody v. INS	
385 U.S. 276	7

11 11, 16

Codes	Page
28 U.S.C. 1254	2, 5
28 U.S.C. 2106	2, 5, 9, 12
28 U.S.C. 2347	9

Rules	Page
8-CFR-242.14(e)	13
8-CFR-292.5(b)	14

IN THE SUPREME COURT
OF THE UNITED STATES

No. _____

RODOLFO GARCIA-JARAMILLO,

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IMMIGRATION AND NATURALIZATION SERVICE,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Petitioner, Rodolfo J. Garcia, respectfully prays that a writ of certiorari issue to review the Opinion dated September 24, 1979, Order dated January 2, 1980, and Order dated February 13, 1980, of the United States Court of Appeals for the Ninth Circuit entered in C.A. No. 78-3347.

STATEMENT SHOWING JURISDICTION OF THE COURT

The latest order of the Court of Appeals for the Ninth Circuit was entered on February 13, 1980. This petition for certiorari was filed within ninety (90) days of that date. The Honorable Court's jurisdiction is invoked under 28 U.S.C. 1254(1). Jurisdiction of this Court pursuant to 28 U.S.C. 2106 is also invoked for the issuance of an order remanding the case to the lower court for further proceedings so petitioner can submit additional evidence in support of his contentions.

STATEMENT OF THE FACTS OF THE CASE

1. Rodolfo Garcia-Jaramillo is a resident alien, a native and citizen of Mexico.

2. On March 27, 1973, petitioner married Maria Yolanda Almengor, a United States citizen.

3. By virtue of said marriage petitioner was able to obtain an immigrant visa and was admitted into the United States as an immigrant, as spouse of a United States citizen, on August 3, 1973.

4. That after petitioner entered the United States as an immigrant, petitioner joined his wife at El Paso, Texas, where they lived as husband and wife.

5. That due to economic reasons petitioner moved to San Francisco, California, and then to San Diego, California.

6. That during this period petitioner was attempting to persuade his wife, Maria Yolanda Almengor, to join him in San Diego; notwithstanding these several attempts made by the petitioner, his wife refused to join him. Whence he sought dissolution of said marriage and on February 26, 1976, the Superior Court of the State of California in the County of San Diego granted a dissolution of their marriage.

7. The duration of said marriage was two (2) years and eleven (11) months, id est: date of marriage, March 27, 1973, to the date of final dissoulution, February 26, 1976, it is two years and seven months after the petitioner entered the United States on August 3, 1973, to the date of final dissolution, February 26, 1976.

8. That the Immigration and Naturalization Service (hereinafter referred to as "Service") conducted investigations and on October 28, 1976, an Order to Show Cause was issued by the San Diego District Director charging the petitioner with three (3) different violations of Section241(a)(1) of the INS Act (8 U.S.C. 1251(a)(1):

(a) §212(a)(14) [8U.S.C. 1182(a)(14)] no labor certification;

(b) §212(a)(19) [8 U.S.C. 1182(a)(14)], procurement of visa through fraud or willful misrepresentation of a material fact; and

(c) §212(a)(20) [8 U.S.C. (a)(20)], entry without a valid immigrant visa.

9. That on May 17, 1977, after several hearings conducted both at El Paso and San Diego, the Service

found petitioner deportable on all counts and issued the Order of Deportation.

10. That petitioner appealed from said Order to the Board of Immigration Appeals and on May 30, 1978, the Board of Immigration Appeals issued its Order affirming the finding of the Immigration Judge.

11. Petitioner filed Petition for Review pursuant to 8 U.S.C. 1105(a) to the Court of Appeals for the Ninth Circuit and on September 24, 1979, the Court entered its opinion rejecting the arguments raised by the petitioner. The only concession given by the Court was: if there was any error, said error was harmless and not prejudicial.

12. Petitioner requesting a rehearing in banc. The Court denied by its Order entered January 2, 1980.

13. Petitioner filed a petition pursuant to 28 U.S.C. 2347 (c) before the Court of Appeals seeking an order allowing petitioner to submit additional evidence. This petition was significant because petitioner sought to present sworn statements of Maria Yolanda Almengor (former wife of petitioner), Rosalina Ochoa (roommate of M. Almengor), and Luis Medrano (witness the Service prevented from testifying). Said petition is very important because these witnesses were the same witnesses utilized by the Immigration Judge in reaching the deportation order. This petition to submit additional evidence was denied by the Court on February 13, 1980.

14. On March 6, 1980, the Service arrested the petitioner. On the same date the undersigned sent to this Honorable Court the petitioner's Manifestation of Intention to file

Petition for Review. Copy of this manifestation was served personally on March 6, 1980, at 1:15 P.M. on Mr. Ritchie (officer in charge at the Service).

15. On March 7, 1980, the Service, notwithstanding the notice served on them that petitioner will file Petition of Certiorari, and in their effort to cover upon Mr. Labato's (Service investigator in El Paso, Texas) mistakes and misdeeds, deported petitioner. These errors and misdeeds of Mr. Labato are shown in the sworn statements sought to be presented by the petitioner before the Court of Appeals.

16. That on April 24, 1980, the petitioner filed with the Service an application for petitioner's reentry to prosecute the foregoing Petition for Certiorari and to question the legality of his deportation.

17. This Petition for Certiorari is based on 28 U.S.C. 1254(1) and 28 U.S.C. 2106.

QUESTIONS PRESENTED

I

WHETHER THE HONORABLE COURT OF APPEALS FOR THE NINTH CIRCUIT COMMITTED ERROR IN REFUSING TO ALLOW PETITIONER TO SUBMIT ADDITIONAL EVIDENCE

II

WHETHER THE HONORABLE COURT OF APPEALS FOR THE NINTH CIRCUIT COMMITTED ERROR IN NOT EXCLUDING THE TESTIMONY OF MS. ALMENGOR AND MS. OCHOA ON THE GROUND THAT SAID TESTIMONY WAS EXECUTED UNDER FORCE, DURESS AND/OR COERCION

III

WHETHER THE HEARING IN THE TRIAL LEVEL VIOLATED DUE PROCESS OF LAW

ARGUMENTS FOR GRANTING THE WRIT

I

WHETHER THE HONORABLE COURT OF APPEALS FOR THE NINTH CIRCUIT COMMITTED ERROR IN REFUSING TO ALLOW PETITIONER TO SUBMIT ADDITIONAL EVIDENCE

1. Petitioner raised the issue of sufficiency of evidence before the Court of Appeals. The Court of Appeals answered by claiming that its function in judicial review is limited to determining whether the findings of the Immigration Judge are supported by reasonable, substantial and probative evidence. The Court cited **Whetstone v. INS,** 561 F.2d 1303, 1306 (9th Cir. 1977) and **Woody v. INS,** 385 U.S. 276. Petitioner believes that the decision in this case violates the holding of this Honorable Court in **Woody, supra.** Mr. Justice Stewart held:

> "That no order for deportation of resident alien may be entered, regardless of length of time that alient has resided in United States, unless it is found by **clear, unequivocal and convincing** evidence that facts alleged as grounds for deportation are true."

2. Petitioner will now proceed to explain why the opinion in the instant case violates the holding in **Woody,**

supra. The Immigration Judge based his decision, finding petitioner deportable, solely on sworn statements of Maria Yolanda Almengor (former wife of petitioner) and Rosalia Ochoa (roommate of Ms. Almengor). Petitioner on January 14, 1980, moved the Court of Appeals seeking an order to allow petitioner to adduce additional evidence. The evidence sought to be submitted by petitioner consists of:

(a) Sworn statements of Maria Yolanda Almengor; and

(b) Sworn statements of Rosalia Ochoa.

These two witnesses used by the Service as their prosecution witnesses have executed sworn statements suggesting that they were coerced by the Service Agent or Agents into giving their prior sworn statements. To show good faith on the part of petitioner on the alleged coercion and/or pressure perpetrated by the Government's Agents, petitioner was willing to deposit the said sworn statements before the Court of Appeals provided there should be sua sponte order enjoining the respondent's agent from interviewing the witnesses prior to the requested hearing. This motion of petitioner was denied by the Court of Appeals on February 13, 1980. Had the Court of Appeals allowed petitioner to adduce additional evidence, petitioner should have been able to show that there was no clear, unequivocal and convincing evidence to support the deportation order, which is required in **Woody** holding.

3. This Honorable Court in the case of **United States of America v. Alberta Lloyd,** 400 F. 2d 414, granted

petition for certiorari. In that case Albert Lloyd was convicted for the possession of and the selling of narcotics. The Government had built its case through the use of an informant, Federal Agent, and two policemen. Attorney for defendant requested that the identity of the informant be disclosed, contending that the informant's testimony would be relevant and helpful to his client's defense. The Government objected on the ground of privilege. This Honorable Court ordered a remand to determine if the question of whether the disclosure of the informant's identity would have been relevant and helpful in the defense of the accused. In this case at bar, petitioner is not only trying to show the relevancy of the testimony of Ms. Almengor and Ms. Ochoa, but petitioner is trying to establish by clear, unequivocal and convincing evidence that the prior sworn statements of the Service's witnesses were executed by force, duress and/or coercion. Petitioner had invoked provisions of 28 U.S.C. 2347 (c) as the authorities of the Court of Appeals to remand the case. Petitioner complied with the elements of the law by showing:

(a) the materiality of the evidence sought to be introduced. The sworn statements of Ms. Almengor and Ms. Ochoa were material because they were the very witnesses utilized by the Court in reaching its decision; and

(b) This evidence was unavailable during the final level because of pressure and/or coercion by the Government Agents.

Notwithstanding the compliance of the petitioner the Court of Appeals disposed of the petitioner's motion by:

"ORDER:

The Petition Directing Respondent to Receive Petitioner's Additional Evidence is denied."

4. It is respectfully submitted that substantial justice will be rendered to everyone, especially to the petitioner, if this Honorable Court will issue a remand in this case. Petitioner is invoking 28 U.S.C. 2106 as the authority of this Honorable Court to issue an order for remand.

II

WHETHER THE COURT OF APPEALS FOR THE NINTH CIRCUIT COMMITTED ERROR IN NOT EXCLUDING THE TESTIMONY OF MS. ALMENGOR AND MS. OCHOA ON THE GROUND THAT SAID TESTIMONY WAS EXECUTED UNDER FORCE, DURESS AND/OR COERCION.

1. This issue has been raised with the Court of Appeals but in a different setting. Petitioner before the Court of Appeals objected to the testimony of Ms. Almengor on the ground of privileged communication. To the testimony of Ms. Ochoa, petitioner questioned her credibility.

2. There was a change of circumstances after the Court of Appeals rendered its opinion and its order denying petitioner's petition for re-hearing in banc. This change of circumstances consists of : Ms. Almengor, Ms. Ochoa and Mr. Medrano have executed sworn statements indicating that the Government's Agent or Agents have perpetrated

pressure on the said witnesses and secured inaccurate statements. The Court of Appeals attention was invited on this question when petitioner requested issuance of the order allowing petitioner to adduce additional evidence. The Court of Appeals denied this motion per its order dated February 13, 1980.

3. Petitioner believes that this question of coerced testimony is of first impression to this Court in immigration cases. Petitioner has not found any similar question brought before this Honorable Court. The only case found by petitioner is an unreported case decided by the Board of Immigration Appeals, **In the Matter of Jachero-Cuzco, File A22-525-878.** There is no complete citation because the case has not been designated for publication. In **Jachero-Cuzco, supra,** the alien was apprehended by the Service on December 8, 1977. The Service took the alien's statement on Form I-215B and induced the alien to sign it. During the deportation hearing the alien refused to testify and claimed that said statement was taken under coercion and duress. The Immigration Judge admitted the document and denied the alien's attorney cross-examination of the Service's agent who secured the signature on the document. The Board of Immigration Appeals held:

> "Admission attained by coercion or intimidation may not be the basis of a deportation order. **Bong Youn Choy v. Barber,** 279 F. 2d 642 (9th Cir. 1960). **Valeroz v. INS,** 387 F. 2d 921 (7th Cir. 1967).

4. In this case at bar, although it is not the petitioner who claims coercion, it is the Service's witnesses who were

coerced to support the deportation order against petitioner.

5. For this reason, the authority of this Honorable Court under 28 U.S.C. 2106 should be exercised in order that the coerced testimony be refuted and/or withdrawn and the new sworn statements be admitted as petitioner's additional evidence.

III

WHETHER THE HEARING CONDUCTED AT THE TRIAL LEVEL SATISFIES DUE PROCESS OF LAW

1. This issue was raised before the Court of Appeals. The Court of Appeals found that due process is satisfied if there was a full and fair hearing. The Court cited **Wong Yang v. McGrath,** 339 U.S. 33 as authority.

2. The order of the Immigration Judge dated December 9, 1976, is hereby reproduced because it serves as the basis of petitioner's premise for his argument.

"ORDER OF THE IMMIGRATION JUDGE FOR TAKING OF DEPOSITION

IT APPEARING that the application of Counsel for the respondent to cross-examine Maria Yolanda Almengor, residing at 3200 Indalia Street, El Paso, Texas (Exhibit 6), is timely and not objected to by Counsel for the Service, and

IT FURTHER APPEARING that the witnesses are not reasonably available at San Diego, California, the place of hearing, and that their testimony is essential.

IT IS BY THIS COURT ORDERED that pursuant

to 8 C.F.R. 242.14 (e) after due and proper notice in writing is given to all parties that Maria Yolanda Almengor, Rosalis Ochoa, and Luis Medrano, supra, be presented by the Service before Immigration Judge at El Paso, Texas, for oral direct and cross-examination under oathe concerning material and relevant matters set forth in the record of proceedings, and

IT IS BY THIS COURT FURTHER ORDERED that in the event of the refusal or willful failure of the witnesses within the United States, after due notice, to appear and give testimony, a subpoena shall be promptly issued.

John C. Williams, Immigration Judge"

3. The basis of the authority of the Immigration Judge to issue said order is 8 C.F.R. 242.14(e) which we have quoted in pertinent part:

"8 C.F.R. 242.14(e) provides for the ruling of taking depositions. It provides among other things: 'Such order may prescribe and limit the contents, scope or manner of taking the deposition .... The order of the special inquiry officer to take a deposition shall IDENTIFY the witness .... The officer presiding at the taking of the deposition shall NOTE but not rule upon objection and he shall not comment on the admissibility of evidence or on the credibility and demeanor of the witness.' "

4. One of those witnesses to be deposed as provided in the order quoted in paragraph 2 was Mr. Medrano.

5. The following portion of the transcript of the deposition is quoted.

Pages 198, 199 and 200 of the record provides:

"Judge: . . . . Is Mr. Medrano present and do you intend to present him for cross-examination by Mr. Walker?"

Page 199, line 4 provides:

"Your Honor, he was present a little bit earlier and at the outset of the hearing, I DECLINE TO PRESENT HIM AT THIS TIME. What I would request is that this deposition taking remain open for the short period of time in ORDER TO ALLOW me to contact the Trial Attorney in San Diego. Possibly for the presentation of an additional witness, the Investigator MR. LOBATO, whose investigative report contains MR. MEDRANO's testimony.

Judge: I see, then are you prepared to establish that Mr. Medrano would be an adverse witness. That, is the reason for your requesting Investigator Lobato in lieu thereof."

6. Apparently from the above transcript the Trial Attorney for the respondent in El Paso, Texas, conducted a conference with Mr. Medrano prior to the deposition. During this conference Mr. Medrano indicated that he will testify contrary to Investigator's Report. Because of this, the Trial Attorney for the respondent in El Paso, Texas, refused to comply with the order of the San Diego Immigration Judge, which has never been rescinded or modified.

7. Petitioner has a sworn statement of Mr. Medrano executed on November 20, 1979. This sworn statement completely explains the reason why he was not presented by the Service. The Court of Appeals refused to allow petitioner to submit the said sworn statement as additional evidence.

8. In the sworn statement of Mr. Medrano, he claims that Mr. Lobato (INS investigator) presented to him a typewritten statement for his signature. Mr. Medrano refused to sign it because it was a complete lie. This is the reason why the attorney for the Service in El Paso, Texas, refused to present Mr. Medrano.

9. These facts and allegations substantiate the contention of petitioner, that Ms. Almengor and Ms. Ochoaa were also coerced into signing their sworn statements.

10. It is respectfully submitted that the refusal by the respondent to have Mr. Medrano examined is extremely prejudicial to petitioner.

11. The right of petitioner to cross-examine Mr. Medrano is guaranteed by 8 C.F.R. 292.5(b). If Mr. Medrano was allowed to be cross-examined, petitioner could establish a good and proper defense and could have shown to the Court that all of the accusations were untrue. The effective refusal by the Service to permit petitioner to exercise his right to cross-examine Mr. Medrano violates the inherent requirement of the due process of law.

12. Another unusual procedure adopted by the Immigration Judge in the trial level was: the sworn statement of both Ms. Almengor and Ms. Ochoa (Exhibits 4 and 5) was

never identified, nor due execution established at the time it was admitted into evidence. Counsel for petitioner objected to these documents and the Immigration Judge ruled on their admission as evidence prior to the identification and establishment of due execution. The Immigration Judge allowed the attorney for the Service to utilize these sworn statements in cross-examining the petitioner prior to the time and the said sworn statements were admitted into evidence.

13. To cure this gross error in the hearing, the Service should have allowed petitioner to cross-examine Mr. Lobato (Service's Investigator) who used force, duress, deception and coercion in taking these sworn statements.

14. In the matter of **Jachero-Cuzco, supra,** the Board of Immigration Appeals has said:

> "An immigration judge who utilizes a Service investigator to identify statements or records made from statements from a repondent may not refuse the respondent's counsel the right to cross-examine the witness as to the voluntariness of the statements. The right to cross-examine, apart from being a right inherent in due process of law, is equally accorded by the regulations. Indeed, the immigration judge himself is required by 6 C.F.R. 242.16(a) to inform the respondent of this right."

14. It is respectfully submitted that petitioner was not accorded a fair hearing in accordance with due process requirements and therefore the case should be remanded to cure this error.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the opinion and orders of the Ninth Circuit.

Respectfully submitted,
LAW OFFICES OF FREDERICK HETTER

By: FREDRICK HETTER
Attorney for petitioner

APPENDIX "A"

IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

RODOLFO GARCIA-JARAMILLO,

Petitioner,

vs.

IMMIGRATION AND NATURALIZATION SERVICE,

Respondent.

OPINION

PETITION TO REVIEW A DECISION OF THE U.S. IMMIGRATION & NATURALIZATION SERVICE

Before: Choy and Tang, Circuit Judges and Renfrew,* District Judge.

TANG, Circuit Judge:

Garcia-Jaramillo ("Garcia") seeks review of a BIA decision finding him deportable as an alien excludable at the time of entry, 8 U.S.C. § 1251(a). The BIA affirmed the decision of the immigration judge who found Garcia excludable for (1) wilfully withholding critical information concerning his purported marriage to an American citizen[8 U.S.C. § 1182(a) (19)]; (2) procuring an invalid immediate relative visa by means of a sham marriage [8 U.S.C. § 1182(a) (20)] and (3) entering without a valid labor certificate [8 U.S.C. § 1182(a) (14)]. On appeal Garcia alleges that the evidence was insufficient to prove a sham

marriage; that testimony by his former wife contained privileged communications; and that he was denied a fair and impartial hearing.

FACTS

On March 27, 1973, Garcia, a native and citizen of Mexico, married a native and citizen of the United States. They separated on August 1, 1973, never having resided as man and wife. Garcial was granted an immigrant visa on August 3, 1973 and classified a spouse of a U.S. citizen. The parties were divorced February 26, 1976. On May 17, 1977, after a hearing, an immigration judge ordered Garcia deported on the grounds that his marriage was a sham from its inception and entered into soley for immigration purposes.

DISCUSSION

(1) Sufficiency of Evidence of a Sham Marriage.

Initially, Garcia urges that it is irrelevant whether his marriage was a sham since he and his wife freely entered into a valid, legal marriage in Las Cruces, New Mexico. The argument is frivolous. It is within the authority of the INS to make inquiry into the marriage to the extent necessary to determine if it was entered for the purpose of evading the immigration laws. **Bark v. INS,** 511 F. 2d 1200 (9th Cir. 1975). A marriage is a sham "if the bride and groom did not intend to establish a life together **at the time they were married." Id.** at 1201. Conduct and lifestyle before and after marriage is relevant ot the extent it aids in determining the intent of the parties at the time they were married. **Id.**

In determining the sufficiency of the evidence judicial review is limited to whether the findings of the immigration judge are supported by "reasonable, substantial and probative evidence." **Whetstone v. INS,** 561 F. 2d 1303, 1306 (9th Cir. 1977); 8 U.S.C. §1105(a) (4); **See also Woodby v. INS,** 385 U.S. 276, 282 (1966).

Here, there was substantial evidence that the marriage was a sham. Garcia's former wife testified that Garcia approached her three months before marriage and offered to pay her $200.00 to marry him and help arrange for a resident passport. He told her they would not have to live together and he would later get a divorce. She testified he gave her approximately $150.00 and that she lived with her roommate both before and after her marriage. The testimony of the roommate corroborated her testimony. There is ample evidence to support the findings that Garcia agreed to pay his wife to marry him and to terminate the marriage upon obtaining immigration papers.

Garcia disputes his former wife's testimony. However, the immigration judge discredited Garcia's testimony which is conflicting and incredible. The judge's credibility determination rests on reasonable substantial and probative evidence and this Court will not overturn the evaluation. **Espinoza Ojeda v. INS,** 419 F. 2d 193, 186 (9th Cir. 1969).

(2) Privileged Communications

Garcia asserts his wife was incompetent to testify against him. In **Volianitis v. INS,** 352 F. 2d 766 (9th Cir. 1965), this Circuit ruled that the marital privilege applies

in a deportation proceeding. However, once the parties are divorced, the privilege extends and is limited only to confidential communications during marriage.

Garcia's counsel never raised the marital privilege at the hearing and therefore waived it. Moreover, the incriminating portions of his wife's testimony were not privileged under **Volianitis.** Her testimony at the hearing was after her divorce. She revealed conversations with Garcia that occurred before they married and she told about their sexual conduct after marriage. Neither conversation before marriage nor testimony concerning the existence or lack of sexual relations between former spouses is privileged after divorce. The immigration judge did admit a written statement made by Garcia's wife prior to their divorce which would have been privileged in its entirety. **However, its admission was harmless since the written statement was essentially a summary of her more extensive testimony before the immigration judge** after her divorce and which did not involve confidential communications.

(3) Due Process Arguments

In a deportation hearing, an alien is entitled to the guaranty of due process which is satisfied only by a full and fair hearing. **Wong Yang Sung v. McGarth,** 339 U.S. 33, 49-51 (1950); **Ramirez v. INS,** 550 F. 2d 560, 563 (9th Cir. 1977). Such a hearing is denied only if the thing complained of causes alien to suffer some prejudice. **Nicholas v. INS,** 590 F. 2d 802 (9th Cir. 1979). Garcia raises several issues in his brief which, in sum, question his

having had a full and fair hearing.

Garcia urges that he was denied a fair hearing because testimony was received that he was a homosexual before, during and after his marriage. The record does not support Garcia's allegation that he was asked an inordinate number of questions concerning homosexuality. **Even if we were to assume the testimony was improper, it was not prejudicial.** Aside from such testimony, the immigration judge's finding of a decision to marry solely to evade the immigration laws rests on substantial, provative and reasonable evidence.

Garcia also contends that the failure of the Government to depose two persons, Guiber Lobato and Luis Medrano, was a denial of due process. Lobato was a government investigator who took a written statement from Medrano. The immigration judge afforded no weight to Medrano's statement in making his decision. Garcia could not have been prejudiced by the inability to cross-examine these persons when their testimony was never considered by the immigration judge.

Finally, Garcia's appellate counsel asserts that counsel at the deportation hearings was incompetent since there was failure to protect confidential marital communications and to subpoena Medrano for cross-examination. We have already determined that the former wife's testimony, given after divorce, was not privileged. The written statement before divorce was privileged but its admission was harmless because the evidence was cumulative. The failure to subpoena Medrano was not preju-

dicial since the immigration judge did not rely on Medrano's written statement.

The order of deportation is affirmed.

APPENDIX "B"

IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

RODOLFO GARCIA-JARAMILLO,

Petitioner,

vs.

IMMIGRATION & NATURALIZATION SERVICE,

Respondent.

ORDER

Before: CHOY and TANG, Circuit Judges, and RENFREW,* District Judge.

The panel as constituted above has voted to deny the petition for rehearing and to reject the suggestion for rehearing en banc.

Although the Petition failed to comply with Rule 12 of the Ninth Circuit, the full court has, nevertheless, been advised of the suggestion for rehearing en banc, and no judge of the court has requested a vote on the suggestion for rehearing en banc. Fed. R. App. P. 35(b).

The petition for rehearing is denied and the suggestion for rehearing en banc is rejected.

*Honorable Charles B. Renfrew, United States District Judge for the Northern District of California, sitting by designation.

APPENDIX "C"

IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

RODOLFO GARCIA-JARAMILLO,

Petitioner,

v.

IMMIGRATION & NATURALIZATION SERVICE,

Respondent.

ORDER

No. 78-3347

Before: CHOY and TANG, Circuit Judges, and RENFREW,* District Judge.

The Petition Directing Respondent to Receive Petitioner's Additional Evidence is denied.

*Honorable Charles B. Renfrew, United States District Judge for the Northern District of California, sitting by designation.

PROOF OF SERVICE

STATE OF CALIFORNIA)
ss.
COUNTY OF RIVERSIDE)

I am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years and not a party to the within entitled action; my business address is 612 N. Bush Street, Santa Ana, California 92701.

On May 10, 1980, I served the within Petition for Writ of Certiorari on the interested parties in said action, by placing a true copy in each of 3 envelopes, with postage thereon fully prepaid, in the United States mail at Santa Ana, California addressed as follows:

WADE McCREE
Solicitor General of
The United States
Department of Justice
Washington, D.C. 20530

MARGARET J. PERRY
Attorney
Department of Justice
Washington, D.C. 20530

JAMES J. O'KEEFE
District Director
Immigration and Naturalization Service
880 Front Street
San Diego, CA 92188

I certify under penalty of perjury that the foregoing is true and correct.

EXECUTED on May 10, 1980, at Santa Ana, California.

Jack Gallagher